

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

ANTHONY HUTCHISON
and BRIAN BUSBY,
Defendants.

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No. 4:21-cr-588

**HUTCHISON’S RESPONSE TO
GOVERNMENT’S MOTION FOR PROTECTIVE ORDER**

Defendant Anthony Hutchison files his response to the Government’s Motion For Protective Order [Doc. No. 37]. Mr. Hutchison fails to see the need for the Defendants to maintain a file with protective order acknowledgements signed by any personnel who may have access to discovery in this case. Mr. Hutchison proposes that the Court issue the government’s order as modified in the attached proposed order.

Indeed, the government identifies absolutely no reason why maintaining signed acknowledgements of the protective order would materially further the goals of the protective order. The government’s suggestion that this shouldn’t be burdensome misses the point because (1) it will be burdensome and (2) it is completely unnecessary.

First of all, given the volume of information in this case, it will be burdensome to prepare acknowledgments and maintain them for years. For example, if Mr. Hutchison wishes to keep discovery files on the shared firm workspaces for his lawyers, must every lawyer and support staff member execute an acknowledgment?

What if a summer intern peruses the materials while conducting legal research?

What of a witness who reviews only his or her witness interview? Must such people acknowledge that they will comply with the protective order as to their own statements? What would such compliance even mean? If it wouldn't mean anything, then why are we documenting and maintaining records about it?

The government provides no reason to believe that Mr. Hutchison's lawyers or the vendors, consultants, staff, and experts that they employ are significantly less reliable than those that the government has used. The government also fails to explain why only the Defendants should be held to this requirement when the government has used personal information of the Defendants and third parties for nearly two years (seized under warrants) under no protective order whatsoever. Where is the government's file with the acknowledgments for all of the people who have had access to Mr. Hutchison's payroll information containing confidential matters about Mr. Hutchison's employees?

And this requirement is not only confusing and burdensome, it has no corresponding benefit. To be sure, those who receive information subject to the protective order should be aware of the protective order. But the government provides no basis for its request that this Court order defense counsel (and only defense counsel) as to the particular means and manner of ensuring that those who receive protected information know to keep it protected. Nor does the government explain why it is necessary for the Court to order the manner in which defense counsel evidences that it properly protected the information.

In this way, the requirement for defense counsel to create and preserve acknowledgments becomes little more than a trap for the unwary. A potential backdoor to find that defense counsel violated some technical requirement that in no way undermined the spirit or intent of the protective order.

And, finally, though protective orders in some criminal cases contain provisions like the one the government asks for here, protective orders in other cases contain no such provisions. *See* Exhibit A.

Prayer

For all of these reasons, Mr. Hutchison respectfully requests that the Court enter the Government's proposed protective order as modified by Mr. Hutchison and attached hereto.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 18, 2022, this Response was filed by CM / ECF, ensuring service on all counsel of record.

/s/ John MacVane
JOHN MACVANE